

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH JUNE 2007 / 29TH JYASHTA 1929

Bail Appl..No. 3697 of 2007()

CRIME NO.163/2007 OF NALLALAM POLICE STATION,KOZHIKODE

: PETITIONERS/ACCUSED

1. ISMAYIL, AGED 40 YEARS, S/O MUHAMMED,
PULIYAMTHODI HOUSE, KARUGVAKKAD AMSOM,
VAZHAKKAD DESOM, ERANAD TALUK,
MALAPPURAM DISTRICT.
2. NASEER, AGED 27 YEARS, S/O MOYIN KUTTY,
PUTHIYEDATH HOUSE, PERUMANA AMSOM, DESOM,
KOZHIKODE TALUK.
3. SHAFFI, S/O ABDURAHIMAN, AGED 23 YEARS,
MANISSERY HOUSE, PERUMANA AMSOM, DESOM,
KOZHIKODE TALUK.
4. RINEEF, S/O MOYIN KUTTY, AGED 24 YEARS,
PUTHIYEDATH HOUSE, PERUMANNA AMSOM, DESOM,
KOZHIKODE TALUK.
5. MUNEER, S/O SAIDALAVI, AGED 21 YEARS,
MANISSERY HOUSE, PERUMANNA AMSOM, DESOM,
KOZHIKODE TALUK.
6. ABDUL SALEEM, S/O MUHAMMED KOYA,
AGED 29 YEARS, CHIRATTU HOUSE,
PERUMANNA AMSOM,DESOM, KOZHIKODE TALUK.
7. MOOSA, S/O MAMU KOYA, AGED 60 YEARS,
KUZHIPALLI POTTEMMAL HOUSE, PERUMANNA AMSOM,DESOM,
KOZHIKODE TALUK.
8. MUNEER E., S/O POCKER, AGED 27 YEARS,
EDAKKAT HOUSE, PERUMANNA AMSOM DESOM,
KOZHIKODE TALUK.
9. AYYOOB.P., S/O KOYA, AGED 21 YEARS,
CHERATTA THAZHAM HOUSE, PERUMANNA AMSOM DESOM,
KOZHIKODE TALUK.

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10. RIYAS M., S/O MOIDEEN KOYA, AGED 24 YEARS, MANISSERY HOUSE, PERUMANA AMSOM, DESOM, KOZHIKODE TALUK.

11. SHAFEEQUE, S/O MUHAMMED KUTTY, AGED 20 YEARS, ARANGALIL HOUSE, PERUMANNA AMSOM DESOM, KOZHIKODE TALUK.

12. ABBAS, S/O ALAVI, AGED 32 YEARS, CHIRAKKAL HOUSE, PERUMANNA AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, NALLALAM POLICE STATION,
KOZHIKODE DISTRICT, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.3697 of 2007

Dated this the 19th day of June, 2007

ORDER

Application for anticipatory bail. Petitioners face allegations, inter alia, under Section 353 read with 149 I.P.C; that is the only non bailable offence. The crux of the allegations is that on 31.05.07 at about 9 a.m, the petitioners were members of an unlawful assembly and used force to deter the police force which had come to the scene on coming to know that sand was illegally collected at the scene of the crime. F.I.R has been registered. All the accused are named in the F.I.R. Investigation is in progress. Petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. On account of political animosity, such baseless allegations have been raised. The petitioners were not arrested at the scene and that indicates falsity of the versions of the prosecution. At any rate, the only non bailable offence alleged being the one punishable under Section 353 I.P.C, directions under Section 438 Cr.P.C may be issued in favour of the petitioners, it is prayed.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the jurisdiction under

Section 438 Cr.P.C. The allegations, when carefully considered, cannot at all suggest that they were false allegations raised with any mala fide intend.

4. Having considered all the relevant inputs, I am certainly of the opinion that this is a fit case where the petitioners must resort to the ordinary and regular procedure of appearing before the police or the learned Magistrate having jurisdiction. They must then seek bail in the ordinary course. I find no reason to assume that the learned Magistrate would not consider their application for bail on merits, in accordance with law and expeditiously. Every court must do the same.

5. This Bail Application is, in these circumstances, dismissed, but with the observation that if the petitioners surrender before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-